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10 INTERCONTINENTAL HOTELS GROUP
11 RESOURCES, LLC; IHG MANAGEMENT
(MARYLAND) LLC; INTERCONTINENTAL
12 HOTELS OF SAN FRANCISCO, INC; SIX
CONTINENTS HOTELS, INC.

13
14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**

16 MARK WISE, individually, and on behalf of
17 other members of the general public similarly
situated,

18 Plaintiff,

19 v.

20 INTERCONTINENTAL HOTELS GROUP
21 RESOURCES, LLC, a Delaware limited liability
company; IHG MANAGEMENT
(MARYLAND) LLC, a Maryland limited
liability company; INTERCONTINENTAL
22 HOTELS OF SAN FRANCISCO, INC., a
Delaware corporation; SIX CONTINENTS
23 HOTELS, INC., a Delaware corporation; and
24 DOES 1 through 100, inclusive,

25 Defendants.

26 Case No. 4:24-cv-01161-AMO

27 **DEFENDANTS' NOTICE OF PENDENCY**
OF OTHER ACTION OR PROCEEDING

28 Removal Filed: February 26, 2024
Complaint Filed: December 29, 2023

1 Pursuant to Local Rule 3-13, Defendants INTERCONTINENTAL HOTELS GROUP
2 RESOURCES, LLC; IHG MANAGEMENT (MARYLAND) LLC; INTERCONTINENTAL
3 HOTELS OF SAN FRANCISCO, INC; SIX CONTINENTS HOTELS, INC. (“Defendants”) hereby
4 files this Notice of Pendency of Other Action or Proceeding identifying the following action with
5 substantially the same parties and a material part of the same subject matter:

6 ***Robert Martinez, et al. v. IHG Management (Maryland) LLC, et al., United States District
7 Court, Southern District of California, Case No. 3:24-cv-00210-L-DEB.***¹

8 **Description:** Class action filed by Plaintiff Robert Martinez against Defendants IHG
9 Management (Maryland) LLC, InterContinental Hotels Group Resources, LLC, and Inter-Continental
10 Hotels Corporation, on December 28, 2023. Martinez, who seeks to represent all current and former
11 employees of Defendants in California who worked during the relevant period, alleges Defendants
12 failed to pay overtime and minimum wages, failed to issue accurate itemized wage statements, failed
13 to provide meal and rest periods, failed to reimburse business expenses, failed to pay all wages during
14 employment in a timely fashion, failed to pay all wages due at termination, and unfair business
15 practices. A copy of the operative complaint in *Martinez* is attached hereto as Exhibit A.

16 **Procedural Posture:** The Court has scheduled an Early Neutral Evaluation (“ENE”) in
17 *Martinez* on May 22, 2024, and will conduct a Case Management Conference on that date if the
18 Parties do not settle the case at the ENE.

19 **Relationship of *Martinez* to this action:** Plaintiffs Wise and Martinez both allege claims
20 against IHG Management (Maryland) LLC and InterContinental Hotels Group Resources, LLC, and
21 seek to represent non-exempt employees who worked at California hotels managed by these entities.
22 Each action alleges (1) that employees were not paid for all hours worked, (2) unreimbursed business
23 expenses, and (3) derivative Labor Code claims.

24 **Whether proceedings should be transferred/coordinated:** Plaintiff in this case works at the
25 InterContinental San Francisco Hotel and is part of the Local 2 union. In contrast, the plaintiff in
26 *Martinez* worked at the InterContinental Hotel San Diego and was part of a different union—Local

27
28

¹ Defendants have concurrently filed a Notice of Related Cases in the *Martinez* Action to identify this
case as a related action.

30. Both plaintiffs worked at different hotels and were subject to different collective bargaining agreements and policies and procedures.

Defendants have been actively meeting and conferring with counsel in the first-filed *Martinez* action to narrow the scope of the proposed class and identify the claims that will be pursued in that action. Because it is unclear which employees plaintiffs *Martinez* and *Wise* will ultimately seek to represent, which of each plaintiff's claims will ultimately apply to which hotels, Defendants currently are not in a position to evaluate the extent to which this case will overlap with the claims asserted in the *Martinez* action. Defendants also intend to meet and confer with counsel for Plaintiff in this case to determine the scope of the proposed class and claims to be pursued.

Accordingly, Defendants do not believe the actions should be transferred or coordinated at this time. Within the next 60 days, Defendants expect to complete the respective meet and confer in both cases to better evaluate the most efficient and effective approach in managing these cases.

DATED: May 1, 2024

Respectfully submitted,

SEYFARTH SHAW LLP

By: /s/ Eric E. Hill

Leo Q. Li
Eric E. Hill
Ping Wang

Attorneys for Defendants
INTERCONTINENTAL HOTELS GROUP
RESOURCES, LLC; IHG MANAGEMENT
(MARYLAND) LLC; INTERCONTINENTAL
HOTELS OF SAN FRANCISCO, INC; SIX
CONTINENTS HOTELS, INC.

EXHIBIT A

EXHIBIT A

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8 Attorneys for Plaintiff ROBERT MARTINEZ
9 As an individual on behalf of PLAINTIFF and
on behalf of all others similarly situated

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN DIEGO

12 ROBERT MARTINEZ, as an individual
13 and on behalf of all others similarly
situated,

14 Plaintiff,

16 v.

17 IHG MANAGEMENT (MARYLAND)
18 LLC, a Maryland Limited Liability
Company; INTER-CONTINENTAL
19 HOTELS CORPORATION, a Delaware
Corporation; INTERCONTINENTAL
20 HOTELS GROUP RESOURCES, LLC, a
Delaware Limited Liability Company; and
21 DOES 1-100, inclusive,

22 Defendants.

Case No.: 37-2023-00056196-CU-0E-CTL

CLASS ACTION COMPLAINT FOR:

1. Recovery of Unpaid Minimum Wages
and Liquidated Damages
2. Recovery of Unpaid Overtime Wages
3. Failure to Provide Meal Periods or
Compensation in Lieu Thereof
4. Failure to Provide Rest Periods or
Compensation in Lieu Thereof
5. Failure to Furnish Accurate Itemized
Wage Statements
6. Failure to Timely Pay All Wages Due
Upon Separation of Employment
7. Failure to Reimburse Business Expenses
and
8. Unfair Competition

DEMAND FOR JURY TRIAL

28

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

12/28/2023 at 05:23:16 PM

Clerk of the Superior Court
By: Ines Quirarte, Deputy Clerk

1 Plaintiff, ROBERT MARTINEZ, ("PLAINTIFF"), an individual on behalf of PLAINTIFF,
2 and all other similarly situated Class Members (as defined below), hereby files this Complaint
3 against Defendants IHG MANAGEMENT (MARYLAND) LLC, a Maryland Limited Liability
4 Company; INTER-CONTINENTAL HOTELS CORPORATION, a Delaware Corporation;
5 INTERCONTINENTAL HOTELS GROUP RESOURCES, LLC, a Delaware Limited Liability
6 Company; and DOES 1-100, inclusive, (collectively referred to herein as "DEFENDANTS").
7 PLAINTIFF is informed and believes and thereon alleges as follows:

8 **JURISDICTION AND VENUE**

9 1. This court possesses original subject matter jurisdiction over this matter. Venue is
10 proper in the County of San Diego pursuant to California Code of Civil Procedure section 395.5
11 because DEFENDANTS transact business within this judicial district, DEFENDANTS employed
12 PLAINTIFF to work in this judicial district and some of the acts, omissions, and conduct alleged by
13 PLAINTIFF herein occurred in this this judicial district.

14 **THE PARTIES**

15 2. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
16 California and a citizen of the State of California.

17 3. PLAINTIFF worked for DEFENDANTS as a server and/or similar title(s) and/or job
18 position(s) from in or around April 2022 through in or around April 2023, and then PLAINTIFF
19 worked for DEFENDANTS as a non-exempt supervisor and/or similar job title(s) and/or position(s)
20 from in or around April 2023 through on or around October 1, 2023. PLAINTIFF worked for
21 DEFENDANTS at DEFENDANTS' San Diego, California locations(s).

22 4. Defendant IHG MANAGEMENT (MARYLAND) LLC is a Maryland Limited
23 Liability Company that, at all relevant times, was authorized to do business within the State of
24 California and is doing business in the State of California.

25 5. Defendant INTER-CONTINENTAL HOTELS CORPORATION is a Delaware
26 Corporation that, at all relevant times, was authorized to do business within the State of California
27 and is doing business in the State of California.

28 6. Defendant INTERCONTINENTAL HOTELS GROUP RESOURCES, LLC is a

1 Delaware Limited Liability Company that, at all relevant times, was authorized to do business within
2 the State of California and is doing business in the State of California.

3 7. DEFENDANTS own, operate, manage and/or staff its employees to work at the
4 hotels, resorts, restaurants and/or other facilities and/or other location(s) in California, including but
5 not limited to, hotels and/or resorts and/or restaurants and/or other facilities located in San Diego,
6 California. Based on information and belief, IHG operates multiple hotels, resorts and/or other
7 facilities including but not limited to, hotels and/or resorts operating under at least nineteen (19)
8 brand names, including but not limited to, hotels and/or resorts operating under the brand name(s)
9 "Intercontinental" and/or "Intercontinental Hotels & Resorts". DEFENDANTS, through its various
10 locations, serve the hospitality industry.¹

11 8. The true names and capacities of the DOE Defendants sued herein as DOES 1
12 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such
13 Defendant by said fictitious names. Each of the Defendants designated herein as a DOE is legally
14 responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to amend this
15 Complaint to reflect the true names and capacities of the Doe Defendants when such identities
16 become known.

17 9. PLAINTIFF is further informed and believes that, at all relevant times, each
18 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
19 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
20 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
21 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
22 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
23 complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant
24 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
25 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
26 controlled, aided and abetted the conduct of all other Defendants.

27
28¹ See <https://www.ihg.com/content/us/en/about/brands>. Last visited on December 28, 2023.

JOINT LIABILITY

2 10. Under California law, the definition of the terms “to employ” are broadly construed
3 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
4 exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3)
5 to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49
6 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control
7 was to reach situations in which multiple entities control different aspects of the employment
8 relationship. Supervision of the work, in the specific sense of exercising control over how services
9 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
10 wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a
11 temporary employment agency) hires and pays a worker, and the other entity supervises the work.
12 *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in
13 California, applying a less stringent standard to what constitutes sufficient control by a business
14 over its vendor’s employees’ wages and working conditions to render that business liable as a joint
15 employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); “[i]f the putative
16 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
17 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
18 employment,” *Id.* at 875 [emphasis added].

19 11. During PLAINTIFF's employment by DEFENDANTS, PLAINTIFF and the Class
20 Members (defined below) were jointly employed by DEFENDANTS for purposes of the Wage
21 Orders, under the alternative definitions of "to employ" adopted by the California Supreme Court
22 in *Martinez*, *supra*. As discussed below, these DEFENDANTS (1) exercised control over wages,
23 hours and working conditions of PLAINTIFF and the Class Members; (2) suffered or permitted
24 PLAINTIFF and Class Members to work for them; and (3) engaged PLAINTIFF and Class
25 Members to work for them.

26 12. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
27 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
28 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices

1 across all of their locations/facilities and subjected all of the Class Members to these same policies
2 and practices regardless of the location(s) where they worked. Among other things, PLAINTIFF is
3 informed and believes that: (1) there is common ownership in, and financial control, in
4 DEFENDANTS' companies, (2) DEFENDANTS utilize common management, who have control
5 over the day-to-day operations and employment matters, including the power to hire and fire, set
6 schedules, issue employee policies, and determine rates of compensation across its locations in
7 California; (3) DEFENDANTS utilize the same policies and procedures for all California
8 employees, including issuing the same employee handbooks and other form agreements; (4)
9 DEFENDANTS use at least some of the same Human Resources personnel and attorneys to oversee
10 employment matters; and, (6) DEFENDANTS share employees.

11 13. For example, DEFENDANTS, and each of them, maintain the same agent for service
12 of process and principal business office as provided to the California Secretary of State and based
13 on information and belief, maintain some of the same attorneys and/or human resources personnel
14 to oversee employment related matters. PLAINTIFF is informed and believes, and thereon alleges
15 that at all times relevant to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF
16 and the Class Members upon whose behalf PLAINTIFF brings these allegations and causes of
17 action, in that DEFENDANTS, exercised sufficient control over PLAINTIFF and the Class
18 Members' wages, hours and working conditions, and/or suffered or permitted PLAINTIFF and the
19 Class Members to work so as to be considered the joint employers of PLAINTIFF and the Class
20 Members.

21 14. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
22 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,
23 time-keeping practices, meal and rest periods, reimbursement of business expenses and other
24 working conditions that were distributed to, and/or applied to PLAINTIFF and the Class Members,
25 and further that DEFENDANTS uniformly compensated and controlled the wages of PLAINTIFF
26 and the Class Members in a uniform manner. DEFENDANTS collectively represented to
27 PLAINTIFF and the Class Members that each was an "at-will" employee of DEFENDANTS, and
28 that DEFENDANTS collectively retained the right to terminate PLAINTIFF's and Class Members'

1 employment with or without cause. Upon information and belief, DEFENDANTS further
2 collectively represented to PLAINTIFF and Class Members in writing the details of their
3 compensation, and the manner in which they were to take meal and rest periods, the procedures
4 required by DEFENDANTS collectively for recordation of hours worked and the policies applicable
5 to PLAINTIFF and Class Members by which DEFENDANTS collectively would evaluate the wage
6 rates of PLAINTIFF and Class Members.

7 15. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
8 and working conditions of PLAINTIFF and Class Members. As such, DEFENDANTS collectively
9 held the right to control virtually every aspect of PLAINTIFF's and the Class Members'
10 employment, including the instrumentality that resulted in the illegal conduct for which PLAINTIFF
11 seeks relief in this Complaint.

12 16. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
13 control over, applied the same policies and practices, and engaged in the same acts and omissions
14 with regard to the other Class Members.

CLASS ALLEGATIONS

16 17. PLAINTIFF brings this action on behalf of PLAINTIFF, and all others similarly
17 situated as a class action pursuant to Code of Civil Procedure section 382. The class PLAINTIFF
18 seeks to represent are defined as follows and referred to as the “Class” or “Class Members”:

19 All current and former non-exempt employees that worked either
20 directly or via a staffing agency for any one or more of the
21 DEFENDANTS at any location in California at any time within the
22 four years prior to the filing of the initial Complaint (“Class Period”).

23 a. Numerosity. While the exact number of Class Members is unknown to
24 PLAINTIFF at this time, the Class is so numerous that the individual joinder of
25 all members is impractical under the circumstances of this case. PLAINTIFF is
26 informed and believes the Class consists of at least 100 individuals.

27 b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment
28 because common questions of law and fact predominate over individual issues.

Common questions include, but are not limited to, the following: (1) whether DEFENDANTS understated hours worked and failed to pay all amounts due to PLAINTIFF and the Class Members for wages earned, including minimum and overtime wages, under California law; (2) whether DEFENDANTS provided PLAINTIFF and the Class Members with all meal periods or premium payments in lieu thereof in compliance with California law; (3) whether DEFENDANTS provided PLAINTIFF and the Class Members with all rest periods or premium payments in lieu thereof, in compliance with California law; (4) whether DEFENDANTS provided PLAINTIFF and Class Members with accurate, itemized wage statements in compliance with California law, displaying, including but not limited to, the total hours worked during the pay period; (5) whether DEFENDANTS timely paid PLAINTIFF and the Class Members all wages due upon separation of employment; (6) whether DEFENDANTS failed to reimburse PLAINTIFF and the Class Members for all business expenses; and (7) whether DEFENDANTS violated California Business and Professions Code sections 17200, *et seq.*

- c. Ascertainable Class. The proposed Class is ascertainable as members can be identified and located using information in DEFENDANTS' business, payroll and personnel records.
- d. Typicality. PLAINTIFF's claims are typical of the claims of the Class Members. PLAINTIFF suffered a similar injury as members of the Class as a result of DEFENDANTS' common practices regarding, *inter-alia*, failure to calculate and pay all owed minimum and overtime wages, failure to provide proper meal periods and rest periods or premium compensation in lieu thereof, failure to provide accurate wage statements, failure to reimburse business expenses, and failure to timely pay all wages due upon separation of employment.
- e. Adequacy. PLAINTIFF will fairly and adequately protect the interests of the Class Members. PLAINTIFF has no interests adverse to the interests of the other

1 Class Members. Counsel who represent PLAINTIFF are competent and
2 experienced in litigating similar class action cases and are California lawyers in
3 good standing. Counsel for PLAINTIFF have the experience and resources to
4 vigorously prosecute this case.

5 f. Superiority. A class action is superior to other available means for the fair and
6 efficient adjudication of this controversy since individual joinder of all members
7 of the class is impractical. Class action treatment will permit a large number of
8 similarly situated persons to prosecute their common claims in a single forum
9 simultaneously, efficiently, and without the unnecessary duplication of effort
10 and expense that numerous individual actions would engender. Furthermore, as
11 the damages suffered by each individual member of the Class may be relatively
12 small, the expenses and burden of individual litigation would make it difficult
13 or impossible for individual members of the Class to redress the wrongs done to
14 them, while an important public interest will be served by addressing the matter
15 as a class action. The cost to the court system of adjudication of such
16 individualized litigation would be substantial. Individualized litigation would
17 also present the potential for inconsistent or contradictory judgments. Finally,
18 the alternative of filing a claim with the California Labor Commissioner is not
19 superior, given the lack of discovery in such proceedings, the fact that there are
20 fewer available remedies, and the losing party has the right to a trial de novo in
21 the Superior Court.

22 **FACTUAL AND LEGAL ALLEGATIONS**

23 18. During the relevant period, PLAINTIFF and each of the Class Members worked for
24 DEFENDANTS in the State of California. At all times referenced herein, DEFENDANTS exercised
25 control over PLAINTIFF and Class Members, and suffered and/or permitted them to work.

26 19. PLAINTIFF worked for DEFENDANTS as a server and/or similar title(s) and/or job
27 position(s) from in or around April 2022 through in or around April 2023, and then PLAINTIFF
28 worked for DEFENDANTS as a non-exempt supervisor and/or similar job title(s) and/or position(s)

1 from in or around April 2023 through on or around October 1, 2023.

2 20. PLAINTIFF worked for DEFENDANTS at DEFENDANTS' San Diego, California
3 location(s). DEFENDANTS assigned PLAINTIFF to work at DEFENDANTS' facilities located in
4 San Diego, California, including but not limited to, at DEFENDANTS' restaurants and/or bars
5 and/or other facilities located within one of DEFENDANTS' hotel(s) and/or resort(s) in San Diego,
6 California.

7 21. PLAINTIFF regularly worked at least ten (10) hours per day when working for
8 DEFENDANTS as a server and/or similar title(s) and/or position(s), and at least eight (8) to sixteen
9 (16) hours per day hours when working as a non-exempt supervisor and/or similar title(s) and/or
10 position(s). PLAINTIFF regularly worked at least five (5) days per week.

11 22. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by
12 DEFENDANTS as hours worked. At all relevant times, PLAINTIFF was a non-exempt employee
13 that was paid on an hourly basis for time counted by DEFENDANTS as hours worked.

14 23. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
15 PLAINTIFF and Class Members for all hours worked, resulting in the underpayment of minimum
16 and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and Class Members for all
17 hours worked by virtue of, DEFENDANTS' automatic deduction and time rounding policies, and
18 failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise
19 unlawful practices for missed or improper meal periods, as explained below.

20 24. Based on information and belief, DEFENDANTS implemented a policy and/or
21 practice of rounding meal period start and end times and/or automatically deducting at least thirty
22 minutes per shift for meal periods, despite having actual and/or constructive knowledge that
23 PLAINTIFF and other Class Members were subject to DEFENDANTS' control during purported
24 meal periods and/or were otherwise not afforded lawful meal periods, depriving PLAINTIFF and
25 Class Members of all wages owed.

26 25. Based on information and belief, Class Members were not paid for all hours worked
27 due to DEFENDANTS' policy and/or practice of paying according to scheduled hours worked
28 instead of actual time worked, and/or mandated off-the clock work policies and/or practices.

1 26. For example, as explained below, based on information and belief, DEFENDANTS
2 would unlawfully edit the clock in and out times for PLAINTIFF's and other Class Members' meal
3 periods in order to display at least a thirty minute off-duty meal period during most if not all shifts
4 worked, notwithstanding the fact that DEFENDANTS had actual and/or constructive knowledge
5 that DEFENDANTS had required PLAINTIFF and other Class Members' to perform work-related
6 tasks during their meal periods.

7 27. Based on information and belief, DEFENDANTS required Class Members to be at
8 their assigned workstations at the start of a scheduled shift, thereby forcing Class Members to gather
9 work-related equipment and/or safety gear, make any necessary adjustments to tools/equipment
10 and/or perform maintenance/cleaning tasks, don work clothing/uniforms and/or protective
11 equipment, and/or complete other work tasks prior to their scheduled shift and/or prior to clocking
12 in/signing in, thereby resulting in pre-shift off-the-clock work.

13 28. Based on information and belief, Class Members were required to complete other
14 off-the-clock work tasks after clocking out for the end of their shifts and/or during uncompensated
15 meal periods, resulting in off-the-clock work and the underpayment of minimum and overtime
16 wages owed to Class Members.

17 29. For example, based on information and belief, DEFENDANTS required Class
18 Members to clock out for the end of their shifts but to continue working due to the need to
19 return/maintain tools, clean and/or organize their work stations/areas, provide shift status updates
20 and/or debriefings and/or participate in work meetings, respond to work-related communications
21 and/or perform other work tasks off-the-clock, resulting in the underpayment of minimum wages
22 and overtime wages owed to Class Members.

23 30. Based on information and belief, DEFENDANTS did not compensate Class
24 Members for time spent donning and doffing personal protective equipment and/or uniforms (e.g.,
25 rubber gloves, hairnets, aprons, hats, and/or face masks) during meal periods, before the start of a
26 scheduled shift, and/or after completing a scheduled shift, resulting in the underpayment of wages
27 owed to Class Members.

28 31. Based on information and belief, at times, Class Members were required to complete

1 off-the-clock work outside of scheduled shifts due to work-related phone calls and/or messages they
2 received to their phones/mobile devices and were required to respond to, including but not limited
3 to, communications from supervisors regarding scheduling and/or other work tasks, resulting in the
4 underpayment of wages owed to Class Members.

5 32. PLAINTIFF and other Class Members were required to perform other off-the-clock
6 work for which they were not compensated. For example, based on information and belief, at times,
7 DEFENDANTS' biometric/electronic/POS employee time-keeping system malfunctioned such that
8 Class Members were required to either reinitiate and/or otherwise troubleshoot the system prior to
9 being able to clock in and/or were unable to clock in at all for the start of their shifts and/or clock
10 back in from meal periods, resulting in off-the-clock work and the underpayment of wages owed to
11 Class Members. Based on information and belief, Class Members experienced the same issues when
12 clocking out for shifts and/or back in for meal periods. This time spent under DEFENDANTS'
13 control was not recorded and not compensated and resulted in unpaid minimum wages owed to
14 Class Members.

15 33. Moreover, based on information and belief, Class Members who opened their work
16 locations were required to first unlock the doors, turn on all the lights in the restaurant/facility and/or
17 deactivate the alarm before clocking in for work, resulting in pre-shift off-the-clock work and the
18 underpayment of wages owed to Class Members. Based on further information and belief, Class
19 Members in charge of closing their location(s) were required to first clock out for their shifts before
20 enabling the alarm, turning off all the lights in the facility and/or locking the doors. This resulted in
21 additional off-the-clock post-shift work that was not compensated and the underpayment of wages
22 owed to Class Members.

23 34. Based on information and belief, DEFENDANTS required Class Members to
24 undergo COVID-19 temperature screenings and/or complete questionnaires prior to beginning their
25 scheduled shift and/or prior to clocking/signing in, thereby, resulting in pre-shift off-the-clock work.

26 35. Based on information and belief, at times, DEFENDANTS require/required Class
27 Members to travel around and/or between DEFENDANTS' restaurants, hotels, offices, facilities
28 and/or locations without compensating Class Members for the travel time.

1 36. For example, based on information and belief, due to scheduling issues and/or
2 understaffing, Class Members were at times required after working at their scheduled facility
3 location to cover a shift at another of DEFENDANTS' restaurants/facilities/locations but were not
4 compensated for the time spent driving to the second restaurant/facility, resulting in the
5 underpayment of minimum and overtime wages owed to Class Members. Based on information and
6 belief, DEFENDANTS failed to compensate Class Members for all time spent completing
7 DEFENDANTS' required trainings and/or courses (e.g., food safety and/or food handler courses)
8 and/or testings and/or certifications (e.g., food handler certifications).

9 37. Based on information and belief, DEFENDANTS failed to pay Class Members the
10 applicable minimum wage for the county and/or city within which the Class Member worked in
11 California.

12 38. Moreover, based on information and belief, DEFENDANTS failed to pay
13 PLAINTIFF and/or other Class Members split shift premium wages when they worked split shifts
14 during the relevant period. For example, based on information and belief, at times, DEFENDANTS
15 required PLAINTIFF and/or other Class Members to work two separate shifts in the same day.
16 Based on information and belief, DEFENDANTS failed to pay PLAINTIFF and/or other Class
17 Members split shift compensation whenever PLAINTIFF's and/or other Class Members' work
18 schedules were interrupted by non-paid non-working periods established by DEFENDANTS, which
19 resulted in a violation of the applicable Wage Order (See section 4 of all applicable Wage orders,
20 "When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in
21 addition to the minimum wage for that workday...). See, also, Cal. Code Regs. Tit. 8, § 11050 (when
22 an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition
23 to the minimum wage for that workday, except when the employee resides at the place of
24 employment). DEFENDANTS also failed to separately itemize these split shift premium wages on
25 PLAINTIFF's and/or other Class Members' wage statements, in violation of Labor Code sections
26 510, 1194 and all applicable IWC Wage Orders. See, https://www.dir.ca.gov/dlse/split_shift.htm.
27 (The employer must itemize the premium payment on the pay stub provided to the employee, and it
28 should be shown as a separate category such as "Split Shift Premium" and should not be lumped

1 into another category such as wages, bonus, etc. DEFENDANTS failed to separately account for
2 the split shift premiums earned by PLAINTIFF and/or other Class Members on their wage
3 statements.

4 39. Based on information and belief, DEFENDANTS failed to pay Class Members for
5 time they were required to spend completing orientation, policy questionnaires, and/or time spent
6 completing the onboarding process including but not limited to reviewing various documents and
7 policies provided by DEFENDANTS. Based on information and belief, this work time was completed
8 off-the-clock and was not compensated.

9 40. Based on further information and belief, DEFENDANTS implemented a time-
10 rounding system that as applied systematically deprived PLAINTIFF and other Class Members of
11 compensable time because the time-rounding system implemented by DEFENDANTS would
12 almost always, if not always, result in understating actual compensable work time.

13 41. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding,
14 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal
15 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of
16 minimum wages owed to PLAINTIFF and Class Members as well as unpaid overtime wages for
17 those Class Members who worked more than eight (8) hours in a day and/or more than forty (40)
18 hours in a week.

19 42. Based on information and belief, DEFENDANTS had actual and/or constructive
20 knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to
21 provide lawful meal periods (as described below) and/or other off-the-clock work resulted in the
22 underpayment of minimum wages owed to PLAINTIFF and other Class Members, in violation of
23 California's minimum and overtime wage laws.

24 43. Based on information and belief, DEFENDANTS failed and continue to fail to pay
25 Class Members two times their regular rate of pay for time worked beyond twelve (12) hours per
26 workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a
27 work week, in violation of California's overtime laws.

28 44. Based on information and belief, DEFENDANTS failed to incorporate all non-

1 discretionary remuneration, including but not limited to, shift differential pay, bonus pay, and/or
2 other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s),
3 resulting in the miscalculation and underpayment of overtime wages owed to PLAINTIFF and other
4 Class Members.

5 **45. Meal Period Violations.** PLAINTIFF and other Class Members consistently worked
6 shifts of at least five and one-half hours or more, entitling them to at least one meal period. However,
7 PLAINTIFF and other Class Members would not receive legally compliant thirty (30) minute first
8 and second meal periods. Based on information and belief, Class Members were consistently unable
9 to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late
10 meal periods, interrupted meal periods, and/or work through part or all their meal periods due to
11 understaffing, the nature and constraints of their job duties and/or commentary from supervisors
12 pressuring them to take non-compliant meal periods or skip meal periods completely.

13 46. For example, based on information and belief, Class Members were forced to take
14 late meal periods in order to complete assigned job duties. Based on information and belief, Class
15 Members were at times interrupted during purported meal periods and/or had meal periods cut short
16 and/or restricted to DEFENDANTS' premises due to the need to continue assigned job duties.

17 47. For example, when working for DEFENDANTS as a server and/or similar title(s)
18 and/or position(s), PLAINTIFF was required to sometimes take his meal periods late and/or take
19 shortened and/or interrupted meal periods and/or work through his meal periods completely.

20 48. When working for DEFENDANTS as a non-exempt supervisor and/or similar title(s)
21 and/or position(s), PLAINTIFF was forced to work through his first meal periods during
22 approximately at least half of his shifts due to understaffing and/or lack of relief workers.

23 49. For example, at times, PLAINTIFF worked shifts lasting at least sixteen (16) hours
24 long without receiving any meal periods during those shifts.

25 50. Also, per DEFENDANTS' unlawful meal period policies and practices,
26 DEFENDANTS failed to relieve PLAINTIFF and other Class Members of all duties and
27 DEFENDANTS' control during unpaid meal periods by including but not limited to, restricting
28 PLAINTIFF and other Class Members to the worksite premises during purportedly off-duty meal

1 periods, resulting in denied meal periods as well as DEFENDANTS' failure to compensate
2 PLAINTIFF and other Class Members for all hours worked.

3 51. Based on information and belief, other Class Members were consistently suffered
4 and permitted to take meal periods past the fifth hour of work and/or had their meal periods
5 interrupted, cut short, restricted to DEFENDANTS' premises and/or otherwise on duty due to
6 commentary from supervisors, understaffing, the nature and constraints of their job duties, and/or
7 the need to meet DEFENDANTS' goals and expectations.

8 52. Based on information and belief, DEFENDANTS implemented policies and/or
9 practices that failed to relieve Class Members of all duties and DEFENDANTS' control during
10 unpaid meal periods.

11 53. Based on information and belief, DEFENDANTS required Class Members to
12 complete off-the-clock work prior to their scheduled shift time which DEFENDANTS failed to take
13 into account when scheduling meal periods for Class Members. Based on information and belief,
14 meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

15 54. Based on information and belief, despite DEFENDANTS' failure to provide lawful
16 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
17 times of PLAINTIFF's and other Class Members' meal periods and/or automatically deducting at
18 least thirty minutes per shift for missed and/or otherwise unlawful meal periods despite having
19 actual and/or constructive knowledge that PLAINTIFF and other Class Members did not receive
20 lawful meal periods.

21 55. Moreover, per DEFENDANTS' uniform policy and practice, Class Members who
22 worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute
23 second meal period.

24 56. For example, when PLAINTIFF worked shifts lasting longer than ten (10) and/or
25 twelve (12) hours, PLAINTIFF was not provided with any second meal period.

26 57. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
27 other Class Members as to the timing and duty-free nature of meal periods. Based on further
28 information and belief, DEFENDANTS did not have a written meal period policy, nor did

1 DEFENDANTS have any sort of compliant policy in practice.

2 58. Moreover, based on information and belief, DEFENDANTS failed to keep accurate
3 records of the true start and end times of PLAINTIFF's and Class Members' meal periods. Based
4 on information and belief, to the extent meal period were recorded, DEFENDANTS illegally
5 rounded the start and end times of purported meal periods resulting in PLAINTIFF and other Class
6 Members not being paid for all time worked as well as late and/or shortened meal periods. *See*
7 *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

8 59. Based on information and belief, DEFENDANTS had actual and/or constructive
9 knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which
10 were free of DEFENDANTS' control owed to PLAINTIFF and other Class Members, in violation
11 of California's meal period laws.

12 60. DEFENDANTS failed to pay PLAINTIFF and other Class Members, an additional
13 hour of wages at their respective regular rates of compensation for each workday a lawful meal
14 period was not provided. DEFENDANTS either failed to pay a meal period premium at all for each
15 workday a lawful meal period was not provided and/or failed to pay the proper meal period premium
16 for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses,
17 shift differential pay and/or other non-discretionary compensation into the regular rate or
18 compensation for purposes of calculating the owed meal period premium.

19 61. **Rest Period Violations.** DEFENDANTS did not properly authorize and provide
20 PLAINTIFF and other Class Members with legally compliant rest periods at a rate of every four (4)
21 hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the
22 work period, as required by law.

23 62. PLAINTIFF and other Class Members were not adequately informed, authorized,
24 instructed about, nor permitted an opportunity to take proper rest periods per California law. Based
25 on information and belief, DEFENDANTS had no policy in place nor instruction as to the taking of
26 duty-free rest periods.

27 63. Based on information and belief, DEFENDANTS did not have a have a compliant
28 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in

1 practice.

2 64. For example, based on information and belief, Class Members were unable to take
3 compliant rest periods due to their need to complete assigned job duties and/or were unable to take
4 a net ten-minute rest period in a suitable rest area and/or had purported rest periods restricted to
5 DEFENDANTS' premises.

6 65. Based on information and belief, Class Members' rest periods were interrupted, cut
7 short, on duty, restricted to premises and/or late due to understaffing, the nature and constraints of
8 their job duties, and/or due to commentary from supervisors/managers pressuring them to skip rest
9 periods completely or otherwise take non-compliant rest periods.

10 66. Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts
11 lasting longer than ten hours.

12 67. Based on information and belief, DEFENDANTS implemented policies and/or
13 practices that failed to relieve PLAINTIFF and other Class Members of all duties and
14 DEFENDANTS' control during rest periods.

15 68. Based on information and belief, Class Members were pressured to complete their
16 work duties according to a designated schedule such that rest periods were only taken once tasks
17 were completed, and/or as time permitted.

18 69. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
19 which PLAINTIFF and Class Members experienced a missed/unlawful rest period in violation of
20 California law. DEFENDANTS either failed to pay a rest period premium at all for each workday a
21 proper rest period was not provided and/or failed to pay the proper rest period premium for failure
22 to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift
23 differential pay, and/or other non-discretionary compensation into the regular rate of compensation
24 for purposes of calculating the owed rest period premium.

25 70. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
26 provide PLAINTIFF and other Class Members with accurate wage statements that complied with
27 Labor Code section 226. As DEFENDANTS failed to provide PLAINTIFF and Class Members with
28 meal and rest periods that complied with Labor section 226.7, the wage statements DEFENDANTS

1 issued to PLAINTIFF and Class Members failed and continue to fail to correctly set forth the gross
2 wages earned, the total hours worked, the net wages earned, and all applicable hourly rates in effect
3 during the pay period and the corresponding number of hours worked at each hourly rate by the
4 employee.

5 71. DEFENDANTS issued wage statements to PLAINTIFF and Class Members that also
6 failed to indicate the earned gross and net wages earned during the pay period, the correct applicable
7 rates of pay for all hours worked, and the total hours worked by PLAINTIFF and Class Members
8 (by virtue of rounded time entries, automatic deduction for meal periods/failure to relieve Class
9 Members of all duties and employer control during unpaid meal periods, payment according to
10 scheduled hours worked rather than actual hours worked, and/or other off-the-clock work policies
11 and practices) which results in a violation of Labor Code section 226(a).

12 72. Separately, and independent of the above allegations, based on information and
13 belief, DEFENDANTS issued wage statements to Class Members that failed to list the total hours
14 worked, in violation of including but not limited to, Labor Code section 226 (a)(2).

15 73. As described herein, based on information and belief, DEFENDANTS also failed to
16 incorporate all forms of non-discretionary compensation earned during the pay period into the
17 overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour
18 of overtime worked by PLAINTIFF and other Class Members.

19 74. Based on information and belief, wage statements issued by DEFENDANTS failed
20 to list the inclusive dates of the pay period for which the Class Member is being paid.

21 75. For example, based on information and belief, wage statements issued by
22 DEFENDANTS failed to list the inclusive dates of the pay period for which the Class Member is
23 being paid. For example, based on information and belief, at times, DEFENDANTS issued wage
24 statements to Class Members containing payment for hours worked during previous pay periods,
25 yet DEFENDANTS' wage statements do not include the inclusive dates of the accurate pay period
26 for that retroactive pay, further failing to list the total hours worked for the pay period, including but
27 not limited to, the total hours worked for the pay period the retroactive pay corresponds with.

28 76. For example, based on information and belief, at times, DEFENDANTS issued wage

1 statement(s) to Class Members that list a category for "Retro" pay without including the inclusive
2 dates of the accurate pay period for that "Retro" pay, further failing to list the total hours worked
3 for the pay period, including but not limited to, the total hours worked for the pay period the
4 retroactive pay corresponds with, in violation of including but not limited to, Labor Code section
5 226(a)(2) and/or Labor Code section 226(a)(6).

6 77. Based on information and belief, wage statements issued by DEFENDANTS failed
7 to list all applicable hourly rates in effect during the pay period and the corresponding number of
8 hours worked at each hourly rate by the employee, in violation of including but not limited to, Labor
9 Code section 226(a)(9).

10 78. For example, based on information and belief, wage statements issued by
11 DEFENDANTS to Class Members failed to list all applicable hourly rates in effect during the pay
12 period and the corresponding number of hours worked at each hourly rate by the employee, in
13 violation of Labor Code section 226(a)(9) due to DEFENDANTS' failure to list an overtime rate
14 category at all and/or failure to list a category containing the proper overtime rate.

15 79. As a result, DEFENDANTS issued wage statements to PLAINTIFF and Class
16 Members that were not accurate and did not include all of the statutorily required information. As
17 such, DEFENDANTS violated Labor Code section 226.

18 80. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
19 information and belief, DEFENDANTS failed to timely pay Class Members all wages that were due
20 and owing upon termination or resignation. Based on information and belief, DEFENDANTS
21 untimely provide final wages to Class Members without regard to the timing requirements of Labor
22 Code sections 201-202.

23 81. Upon separation of employment, Class Members' final paychecks were not timely
24 provided and/or were not timely provided with all owed vacation pay and/or paid time off.
25 Moreover, PLAINTIFF's and Class Members' final paychecks, once provided, did not include all
26 wages owed as they were devoid of, including but not limited to, all owed minimum wages, overtime
27 wages, premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the
28 properly accrued rates (including but not limited to, all owed vacation pay/paid time off paid at the

1 final rate including non-discretionary compensation, including but not limited to, shift
2 differentials)..

3 82. Based on further information and belief, DEFENDANTS failed to timely provide all
4 owed wages immediately upon discharge of employment. Based on information and belief, at times,
5 Class Members experienced breaks in employment caused by DEFENDANTS whereby Class
6 Members would not be called in for work for longer than a single pay period due to including but
7 not limited to DEFENDANTS' lack of work or lack of assignments. Such instances qualify as a
8 discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at the end of
9 such periods of employment, in violation of including but not limited to Labor Code section 201-
10 202.

11 83. These violations subject DEFENDANTS to civil penalties under Labor Code section
12 203, 210, and/or 256.

13 84. **Unreimbursed Business Expenses.** Based on information and belief,
14 DEFENDANTS required PLAINTIFF and Class Members to incur business expenses as a direct
15 consequence of the performance of their job duties without providing reimbursement, in violation
16 of Labor Code section 2802. Based on information and belief, PLAINTIFF and Class Members
17 were improperly required to provide and maintain work tools that are supposed to be the
18 responsibility of the employer.

19 85. Based on information and belief, DEFENDANTS shifted the costs of doing business
20 onto PLAINTIFF and other Class Members requiring them to pay for business expenses including
21 but not limited to, uniforms/work clothing/work shoes, personal protective/safety gear and/or the
22 use of Class Members' personal mobile phone and data usage for work-related purposes including
23 but not limited to receiving and responding to work-related messages and/or phone calls.

24 86. For example, on information and belief, Class Members received calls/messages to
25 their personal cell phones/mobile devices from supervisors and/or other Class Members regarding
26 scheduling and/or other work tasks but were not provided any and/or full reimbursement from
27 DEFENDANTS for these business expenses incurred as a result of being required to use their
28 personal cell phone(s)/mobile device(s) to carry out their assigned job duties.

1 87. For example, PLAINTIFF was required to use his personal cell phone/mobile device
2 for work, including but not limited to, to make and/or receive work-related calls and/or messages.
3 For example, oftentimes PLAINTIFF's supervisor(s) called PLAINTIFF on PLAINTIFF's personal
4 mobile device including but not limited to, during work hours. DEFENDANTS did not provide
5 PLAINTIFF with any and/or full reimbursement for the business expenses PLAINTIFF incurred in
6 connection with being required to use his personal cell phone/mobile device to carry out his assigned
7 job duties, including without limitation, expenses associated with increased data plan charges.
8 Based on information and belief, Class Members were not reimbursed for the cost of using their
9 personal phone for work-related purposes and/or the cost of purchasing and/or maintaining work
10 uniforms/work clothing/work shoes, personal protective/safety gear.

11 88. For example, based on information and belief, Class Members were not reimbursed
12 for the costs of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal
13 protective/safety gear, such as, but not limited to, face masks, gloves, hairnets and/or work shoes.
14 Based on information and belief, at times, DEFENDANTS required Class Members to use their
15 personal vehicles for work without reimbursing them for the personal vehicle expenses they incurred
16 in connection therewith.

17 89. For example, based on information and belief, at times, DEFENDANTS required
18 Class Members to travel from one of DEFENDANTS' hotels/resorts/facilities/restaurants to a
19 second of DEFENDANTS' hotels/resorts/facilities/restaurants for work and/or otherwise required
20 Class Members to use their personal vehicles to carry out their assigned job duties without
21 reimbursing Class Members for the expenses incurred in connection with DEFENDANTS' business
22 use of their personal vehicles.

23 90. As such, DEFENDANTS failed to reimburse Class Members at the legally mandated
24 Internal Revenue Service (IRS) per mile compensation rates in effect during the relevant period.

25 91. As explained above, based on information and belief, Class Members were not
26 reimbursed for the cost of using their personal phone for work-related purposes and/or the cost of
27 purchasing and/or maintaining work uniforms/work clothing/work shoes, personal protective/safety
28 gear.

1 92. Based on information and belief, DEFENDANTS regularly failed to reimburse and
2 indemnify Class Members for business expenses. Pursuant to California Labor Code section 2802,
3 PLAINTIFF and Class Members were entitled to be reimbursed for all reasonable expenses
4 associated with carrying out DEFENDANTS' orders and/or carrying out the duties assigned by
5 DEFENDANTS.

6 93. DEFENDANTS' failure to provide Class Members with full reimbursement for all
7 reasonable expenses associated with carrying out their duties required that Class Members
8 subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

9 94. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
10 engaged in these same herein described unlawful practices and that DEFENDANTS applied these
11 same herein described unlawful practices to all of its employees that it applied to PLAINTIFF.

FIRST CAUSE OF ACTION

**Recovery of Unpaid Minimum Wages and Liquidated Damages
(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

14 95. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

15 96. It is fundamental that an employer must pay its employees for all time worked.
16 California Labor Code sections 218 and 218.5 provide a right of action for nonpayment of wages.
17 Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section 224 only
18 permits deductions from wages when the employer is required or empowered to do so by state or
19 federal law or when the deduction is expressly authorized in writing by the employee for specified
20 purposes that do not have the effect of reducing the agreed upon wage. Labor Code section 223
21 prohibits the pay of less than a statutory or contractual wage scale.

22 97. Pursuant to California Labor Code sections 1194 and 1197, and the Industrial Wage
23 Commission (“IWC”) Wage Orders, an employer must pay its employees for all hours worked, up
24 to 40 hours per week or 8 hours per day, at a regular rate no less than the mandated minimum wage.
25 Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll
26 period is unlawful.

27 98. DEFENDANTS violated California's minimum wage laws by failing to compensate
28 PLAINTIFF and the Class Members for all hours worked by virtue of, among other things,

1 DEFENDANTS' time rounding, automatic deduction for meal periods, off-the-clock/unpaid work
2 completed during meal periods, other pre-shift, post-shift and/or otherwise off-the-clock work,
3 and/or payment according to scheduled hours worked rather than actual hours worked (described
4 above), which resulted in the failure to account for all hours worked and thus the denial of minimum
5 wages.

6 99. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
7 Class Members for all hours worked.

8 100. Based on information and belief, DEFENDANTS had actual or constructive
9 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for
10 meal periods, failure to relieve employees of all duties and employer control during unpaid meal
11 periods, policy and practice of payment according to scheduled work time rather than actual work
12 time, and/or other mandated off-the-clock work resulted in the underpayment of minimum wages
13 owed to PLAINTIFF and other Class Members.

14 101. Pursuant to Labor Code sections 1194 and 1194.2, PLAINTIFF and the Class
15 Members are entitled to recover all unpaid minimum wages and liquidated damages thereon, plus
16 attorney's fees and costs, in an amount to be proved at trial.

17 **SECOND CAUSE OF ACTION**

18 **Recovery of Unpaid Overtime Wages
(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

19 102. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

20 103. Employees in California must be paid overtime, equal to one and one-half times the
21 employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including
22 12 hours in any workday, and for the first eight (8) hours worked on the seventh consecutive day of
23 work in a workweek, and they must be paid double the regular rate of pay for all hours worked in
24 excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh
25 consecutive day of work in a workweek, unless they are exempt.

26 104. PLAINTIFF and the Class Members worked overtime hours for which they were not
27 compensated by DEFENDANTS by virtue of, among other things, DEFENDANTS' time rounding,
28 automatic deduction for meal periods, off-the-clock/unpaid work completed during meal periods,

1 other pre-shift, post-shift and/or otherwise off-the-clock work, and/or payment according to
2 scheduled hours worked rather than actual hours worked (described above), and/or other unlawful
3 policies and/or practices described above which resulted in unpaid minimum and overtime wages
4 which resulted in the failure to account for all hours worked and thus the denial of all owed overtime
5 wages.

6 105. Based on information and belief, DEFENDANTS failed to pay twice Class
7 Members' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for
8 time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in
9 violation of California's overtime laws.

10 106. Based on information and belief, DEFENDANTS further violated California's
11 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
12 limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary
13 compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to
14 include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of
15 the overtime wage rate, resulting in the underpayment of overtime wages owed to PLAINTIFF and
16 other Class Members.

17 107. DEFENDANTS' conduct described above is in violation of California Labor Code
18 sections 510 and 1194 and all applicable Wage Orders.

19 108. PLAINTIFF and the Class Members are entitled to recover all unpaid overtime
20 wages, plus attorney's fees and costs, in an amount to be proved.

21 **THIRD CAUSE OF ACTION**

22 **Failure to Provide Meal Periods or Compensation in Lieu Thereof
(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

23 109. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

24 110. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders,
25 DEFENDANTS were required to provide PLAINTIFF and the Class Members with one 30-minute
26 meal break free from all duties and employer control for all shifts longer than 5 hours, and a second
27 30-minute meal break free from all duties for all shifts longer than 10 hours. Meal periods can be
28 waived, but only under the following circumstances: (1) if an employee's total work period in a day

1 is over five (5) hours but no more than six (6) hours, the required meal period may be waived by
2 mutual consent of the employer and employee, and (2) if an employee's total work period in a day
3 is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be
4 waived by mutual consent of the employer and employee, but only if the first meal period was not
5 waived. Employers covered by the Wage Orders have an obligation to both (1) relieve their
6 employees for at least one meal period for shifts over five hours (see above), and (2) to record having
7 done so.

8 111. Employers must pay employees an additional hour of wages at the employees'
9 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
10 meal period, first meal period provided after five (5) hours, second meal period provided after 10
11 hours). Lab. Code § 226.7.

12 112. As explained above, PLAINTIFF and other Class Members were consistently unable
13 to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often being
14 forced to take late meal periods, interrupted meal periods, and/or work through part or all of their
15 meal periods due to understaffing, the nature and constraints of their job duties, and/or commentary
16 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
17 completely.

18 113. Based on information and belief, DEFENDANTS had and continue to have a policy
19 of rounding the start and end times of employees' meal periods and/or automatically deducting thirty
20 minutes per shift despite having actual and/or constructive knowledge that PLAINTIFF and Class
21 Members did not receive compliant meal periods.

22 114. Moreover, based on information and belief, Class Members did not receive a timely,
23 uninterrupted second meal period when working shifts over ten (10) hours in a workday.

24 115. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS had
25 actual and/or constructive knowledge that its time-rounding and auto-deduction policies and
26 practices, other unlawful policies and practices resulted in the denial of compliant meal periods in
27 violation of California's meal period laws.

28 116. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal

1 periods in violation of California law and/or failed to pay the proper meal period premium for failure
2 to incorporate all non-discretionary remuneration including but not limited to, bonuses, shift
3 differential pay and/or other non-discretionary compensation into the regular rate or compensation
4 for purposes of calculating the owed meal period premium.

5 117. As a result, under Labor Code section 226.7, PLAINTIFF and the Class Members
6 are entitled to one additional hour's pay at the employee's regular rate of compensation for each day
7 a meal period was missed, late, interrupted, or otherwise unlawful, plus attorneys' fees and costs,
8 all in an amount to be proved at trial.

FOURTH CAUSE OF ACTION

Failure to Provide Rest Periods or Compensation in Lieu Thereof (By PLAINTIFF and the Class Members Against all DEFENDANTS)

118. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

119. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
12 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
13 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
14 "insofar as practicable." In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the
15 California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts
16 from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to 10
17 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029).
18 The rest period requirement obligates employers to permit and authorize employees to take off-duty
19 rest periods, meaning employers must relieve employees of all duties and relinquish control over
20 how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257.
21

22 120. If the employer fails to provide any required rest period, the employer must pay the
23 employee one hour of pay at the employee's regular rate of compensation for each workday the
24 employer did not provide at least one legally required rest period, pursuant to Labor Code section
25 226.7.

26 121. Moreover, under California law rest periods must be a "net" ten minutes in a suitable
27 rest area. *Id.* at 268 (relying on January 3, 1986 and February 22, 2002 Division of Labor Standards
28 Enforcement (DLSE) Letters wherein the DLSE ruled that the net ten-minute language for rest

1 periods means ten minutes of time in a rest area and cannot include time it takes to get to and from
2 the rest area). The employer must show that it clearly articulates the right to a net ten minutes,
3 which means it must clearly communicate what “net” ten minutes means (i.e., regardless of what
4 happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in
5 the rest area). *Id.*; see also, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the
6 “onus is on the employer to clearly communicate the authorization and permission [to take rest
7 periods] to its employees.”).

8 122. PLAINTIFF and the Class Members did not receive legally compliant, timely 10-
9 minute rest periods for every four (4) hours worked or major fraction thereof. As explained above,
10 any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject to
11 DEFENDANTS’ control due to the nature and constraints of Class Members’ job duties,
12 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Class Members to
13 skip rest periods completely or otherwise take non-compliant rest periods.

14 123. Based on information and belief, DEFENDANTS implemented policies and/or
15 practices that failed to relieve PLAINTIFF and other Class Members of all duties and employer
16 control during rest periods. Based on further information and belief, Class Members were pressured
17 to complete their work duties according to a designated schedule such that rest periods were only
18 taken once tasks were completed, and/or as time permitted.

19 124. As a result, PLAINTIFF and Class Members did not receive legally compliant first,
20 second, or third rest periods as required by California law.

21 125. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
22 period premium to PLAINTIFF and other Class Members for each workday in which there was a
23 missed or otherwise unlawful rest period. Based on further information and belief, when a rest
24 premium was paid, DEFENDANTS failed to include non-discretionary compensation including but
25 not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the
26 regular rate of compensation for purposes of determining the owed rest period premium.

27 126. DEFENDANTS are therefore liable to PLAINTIFF and the Class Members for one
28 hour of additional pay at the regular rate of compensation for each workday that a required rest

1 period was not provided, pursuant to California Labor Code section 226.7 and the applicable Wage
2 Order, plus pre-judgment interest, plus attorneys' fees and costs, all in an amount to be proved at
3 trial.

4 **FIFTH CAUSE OF ACTION**

5 **Failure to Furnish Accurate Itemized Wage Statements**

6 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

7 127. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

8 128. Pursuant to California Labor Code § 226, subdivision (a), PLAINTIFF and the Class
9 Members were entitled to receive, semimonthly or at the time of each payment of wages, an itemized
wage statement accurately stating the following:

10 (1) gross wages earned, (2) total hours worked by the employee,
11 except for any employee whose compensation is solely based on a
12 salary and who is exempt from payment of overtime under
13 subdivision (a) of Section 515 or any applicable order of the Industrial
14 Welfare Commission, (3) the number of piece-rate units earned and
15 any applicable piece rate if the employee is paid on a piece-rate basis,
16 (4) all deductions, provided that all deductions made on written orders
17 of the employee may be aggregated and shown as one item, (5) net
18 wages earned, (6) the inclusive dates of the period for which the
employee is paid, (7) the name of the employee and his or her social
security number, except that by January 1, 2008, only the last four
digits of his or her social security number or an employee
identification number other than a social security number may be
shown on the itemized statement, (8) the name and address of the
legal entity that is the employer, and (9) all applicable hourly rates in
effect during the pay period and the corresponding number of hours
worked at each hourly rate by the employee.

19 129. As DEFENDANTS failed to provide PLAINTIFF and other Class Members with
20 meal and rest periods that complied with Labor Code section 226.7, the wage statements
21 DEFENDANTS issued to PLAINTIFF and other Class Members failed and continue to fail to
22 correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the
23 total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages
24 earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect
25 during the pay period and the corresponding number of hours worked at each hourly rate by the
26 employee, in violation of Labor Code section 226(a)(9).

27 130. Moreover, due to violations detailed above, including but not limited to,
28 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to provide

1 meal and rest break premiums, and failure to pay all sick leave wages at the proper rates,
2 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish
3 PLAINTIFF and other Class Members with accurate, itemized wage statements that listed the gross
4 and net wages earned and the correct applicable rates of pay for all hours worked. Based on
5 information and belief, DEFENDANTS failed to incorporate all forms of non-discretionary
6 compensation earned during the pay period into the regular rate of pay for purposes of calculating
7 the owed overtime rate, and as such, failed to display the proper overtime rate(s) for each hour of
8 overtime worked by PLAINTIFF and other Class Members.

9 131. As explained above, wage statements issued by DEFENDANTS failed to list the
10 “total hours worked” by PLAINTIFF and Class Members (by virtue of rounded time entries,
11 automatic deduction for meal periods/failure to relieve Class Members of all duties and employer
12 control during unpaid meal periods, payment according to scheduled hours worked rather than actual
13 hours worked, and/or other off-the-clock work policies and practices all described in greater detail
14 *supra*), which results in a violation of Labor Code section 226(a). Failure to list all hours worked on
15 a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v.*
16 *Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

17 132. Separately, and independent from the above allegations, DEFENDANTS issued
18 wage statements to PLAINTIFF and Class Members that violate Labor Code section 226(a)(8), by
19 failing to list the correct name and/or address of the legal entity that is the employer.

20 133. Based on information and belief, wage statements issued by DEFENDANTS failed
21 to list the inclusive dates of the pay period for which the Class Member is being paid.

22 134. DEFENDANTS’ failure to accurately list all hours worked on all wage statements
23 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Class
24 Members over whether they received all wages owed to them.

25 135. As a result, PLAINTIFF and other Class Members have suffered injury as they could
26 not easily determine whether they received all wages owed to them and whether they were paid for
27 all hours worked.

28 136. Based on information and belief, wage statements issued by DEFENDANTS failed

1 to list all applicable hourly rates in effect during the pay period and the corresponding number of
2 hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

3 137. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
4 Class Members with accurate, itemized wage statements.

5 138. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Class Members
6 have suffered injury. The absence of accurate information on their wage statements has prevented
7 earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
8 mathematical computations to determine the amount of wages owed, and will cause difficulty and
9 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
10 submission of inaccurate information about wages and amounts deducted from wages to state and
11 federal government agencies. As a result, PLAINTIFF and Class Members are required to
12 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
13 and pay records than if DEFENDANT had complied with its legal obligations.

14 139. Pursuant to California Labor Code section 226(e), PLAINTIFF and Class Members
15 are entitled to recover fifty dollars per employee for the initial pay period in which a Section 226
16 violation occurred and one hundred dollars per employee per violation for each subsequent pay
17 period, not to exceed an aggregate penalty of four thousand dollars per employee.

18 140. Pursuant to California Labor Code § 226(h), PLAINTIFF and Class Members are
19 entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with
20 California Labor Code § 226(a). Injunctive relief is warranted because DEFENDANTS continue to
21 provide currently employed Class Members with inaccurate wage statements in violation of
22 California Labor Code § 226(a). Currently employed Class Members have no adequate legal remedy
23 for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing unlawful
24 conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS' compliance
25 with California Labor Code § 226(a).

26 141. Pursuant to California Labor Code §§ 226(e) and 226(h), PLAINTIFF and Class
27 Members are entitled to recover the full amount of penalties due under Section 226(e), reasonable
28 attorneys' fees, and costs of suit.

SIXTH CAUSE OF ACTION

**Failure to Timely Pay All Wages Due Upon Separation of Employment
(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

142. PLAINTIFF incorporates all preceding paragraphs as if fully set forth herein.

143. California Labor Code section 201(a) provides, in relevant part, that “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

7 144. California Labor Code section 202(a) provides, in relevant part, that “[i]f an
8 employee not having a written contract for a definite period quits his or her employment, his or her
9 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
10 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
11 to his or her wages at the time of quitting.”

12 145. Based on information and belief, DEFENDANTS failed and continue to fail to timely
13 pay final wages to PLAINTIFF and Class Members upon separation of employment in violation of
14 Labor Code section 201-202. Moreover, final paychecks once provided to PLAINTIFF and Class
15 Members do not include all wages owed as they are devoid of, including but not limited to, all owed
16 minimum wages, overtime wages, premium wages, vacation pay, and all owed sick leave and/or
17 paid time off wages at the properly accrued rates.

18 146. Under Labor Code section 203, PLAINTIFF and the Class Members who are no
19 longer employed by DEFENDANTS are entitled to recover waiting time penalties of up to 30 days'
20 pay, plus attorney's fees and costs, in an amount to be proved at trial.

SEVENTH CAUSE OF ACTION

Failure to Reimburse Business Expenses
(By PLAINTIFF and the Class Members Against all DEFENDANTS)

147 PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

148. California law requires employers to indemnify their employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of their duties or of their obedience to the directions of the employer. *See* Cal. Lab. Code s. 2802 and all applicable Wage Orders section 9(b). Furthermore, "for purposes of [section 2802], the term 'necessary expenditure or losses' shall include all reasonable costs, including, but not limited to, attorneys' fees

1 incurred by the employee enforcing the rights granted by this section.”

2 149. Among other things, under California law, when employees must use their personal
3 cellphones for work-related purposes, the employer must reimburse them for a reasonable
4 percentage of their cell phone bills. See *Cochran v. Schwan's Home Services, Inc.* (2014) 228
5 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was
6 required to use their personal cellphone for work-related purposes and not reimbursed for the use.
7 Id. 1144-1145. California law also requires employers to reimburse employees for automobile
8 expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear
9 and tear on the vehicle. See *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

10 150. As described above, PLAINTIFF and the Class Members were improperly required
11 to pay for business expenses that are legally the responsibility of the employer.

12 151. DEFENDANTS' failure to provide PLAINTIFF and the Class Members with full
13 reimbursement for all reasonable expenses associated with carrying out their duties required that
14 PLAINTIFF and the Class Members subsidize and/or carry the burden of business expenses in
15 violation of Labor Code section 2802.

16 152. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Class
17 Members have suffered injury in that they were not completely reimbursed as mandated by
18 California law.

19 153. Pursuant to California Labor Code section 2802, PLAINTIFF and the Class Members
20 are entitled to recover the full amount of reimbursable expenses due, in addition to reasonable
21 attorneys' fees, and costs of suit.

EIGHTH CAUSE OF ACTION

Unfair Competition

(By PLAINTIFF and the Class Members Against all DEFENDANTS)

154. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

155. DEFENDANTS' unlawful conduct alleged herein constitutes unfair competition
25 within the meaning of California Business and Professions Code section 17200 *et seq.* This unfair
26 conduct includes all unlawful conduct alleged herein, including but not limited to: DEFENDANTS'
27 failure to pay minimum and overtime wages by virtue of its illegal policies and practices;
28

1 DEFENDANTS' failure to authorize or permit, or provide, all required meal and rest periods or pay
2 proper premiums in lieu thereof; DEFENDANTS' failure to furnish complete and accurate itemized
3 wage statements; DEFENDANTS' failure to reimburse business expenses; DEFENDANTS' failure
4 to timely pay all wages owed upon separation of employment; and DEFENDANTS' failure to
5 provide paid sick leave (or paid time off in lieu thereof) at the properly accrued rates (due to,
6 including but not limited to, DEFENDANTS' failure to incorporate all non-discretionary
7 compensation into the sick pay calculation and failure to base the accrued sick leave on the correct
8 number of hours worked as a result of DEFENDANTS' time-rounding/auto deduction policies and
9 practices, payment according to scheduled hours worked and/or other off-the-clock work policies
10 and practices).

11 156. Due to DEFENDANTS' unfair and unlawful business practices in violation of the
12 California Labor Code, DEFENDANTS have gained a competitive advantage over other
13 comparable companies doing business in the State of California that comply with their obligations
14 to authorize or permit rest periods and meal periods or pay proper meal and rest period premiums
15 in lieu thereof, to properly accrue and pay sick time benefits, to provide complete and accurate
16 itemized wage statements, to reimburse employees for all business expenses, to pay all owed
17 minimum and overtime wages and to pay all wages due upon separation of employment of their
18 employees.

19 157. As a result of DEFENDANTS' unfair competition as alleged herein, PLAINTIFF
20 and Class Members have suffered injury in fact and lost money or property, as described in more
21 detail above. Pursuant to California Business and Professions Code section 17200, *et seq.*,
22 PLAINTIFF and Class Members are entitled to restitution of all wages and other monies rightfully
23 belonging to them that DEFENDANTS failed to pay and wrongfully retained by means of their
24 unlawful and unfair business practices.

25 158. PLAINTIFF also seeks an injunction against DEFENDANTS on behalf of the Class
26 Members, enjoining DEFENDANTS and any and all persons acting in concert with them from
27 engaging in each of the unlawful practices and policies set forth herein.

28 159. PLAINTIFF also seeks an award of attorney's fees pursuant to Code Civ. Proc

1 Section 1021.5 and as permitted by law, and an award for costs reasonably incurred, as permitted
2 by law.

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PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for relief and judgment, on behalf of PLAINTIFF and Class Members as follows:

4 1. For an order that the action be certified as a class action;

5 2. For an order that PLAINTIFF be appointed as class representative;

6 3. For an order that counsel for PLAINTIFF be appointed as class counsel;

7 4. For compensatory damages according to proof;

8 5. For liquidated damages according to proof;

9 6. For penalties according to proof;

10 7. For an order requiring DEFENDANTS to make restitution of all amounts wrongfully withheld from PLAINTIFF and the Class Members;

11 8. For an order finding DEFENDANTS have engaged in unfair competition in violation of section 17200, *et seq.*, of the California Business and Professions Code;

12 9. For an order enjoining DEFENDANTS from further acts of unfair competition;

13 10. For pre-judgment interest as permitted by law;

14 11. For attorney's fees and costs reasonably incurred; and

15 12. For such other and further relief that the Court deems just and proper.

Dated: December 28, 2023

CROSNER LEGAL, PC

By:

Jamie K. Serb, Esq.
Brandon Brouillette, Esq.
Zachary M. Crosner, Esq.
Attorneys for Plaintiff,
ROBERT MARTINEZ

DEMAND FOR JURY TRIAL

PLAINTIFF demands a trial by jury on all claims so triable.

Dated: December 28, 2023

CROSNER LEGAL, PC

By:

Jamie K. Serb, Esq.
Brandon Brouillette, Esq.
Zachary M. Crosner, Esq.
Attorneys for Plaintiff,
ROBERT MARTINEZ